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of course, include mistake of law as to one's previous and existing rights. This rule has been recognized in numerous cases: *Erkens* v. *Nicolin* (supra), *Haden* v. *Ware*, 15 Ala. 149; *Gilliam* v. *Alford*, 69 Tex. 267, 6 So. W. 757; *Valley Ry. Co.* v. *Lake Erie Iron Co.* (Ohio), 8 N. E. 486; *Shotwell* v. *Murray*, 1 Johns Ch. 512; *Bilbie* v. *Lumley*, 2 East 469; *Brisbane* v. *Dacres*, 5 Taunt. 143; 2 POMEROY'S EQ. 851. It is difficult to justify this holding, at least as an exception to the rule as to previous and existing rights. Why money should be treated differently from other forms of property is not apparent. Pomeroy, while recognizing that such an exception exists, disapproves of it on principle, 2 POMEROY'S EQ., sec. 851 and note. It may be safely affirmed, however, that some of the courts that have applied this principle, do not regard it as an exception, and would either decline to recognize the rule as to previous and existing rights, or under the peculiar facts before them, would have declined to permit a recovery had the subject matter of the litigation been other than money. That money forms no exception and may be recovered, in an appropriate case of mistake of law, has been held in numerous cases. *Bingham* v. *Bingham*, 1 Vesey Sr. 126; *Bize* v. *Dickason*, 1 Term Rep. 285; *Lawrence* v. *Beaubien* (supra), (where an attempt is made to distinguish between mistake of law and ignorance of law); *Foster* v. *Craige*, 2 Ired. Eq. (N. C.) 533; *Ray* v. *Bank of Ky.*, 3 B. Mon. 510; *Northrop v. Graves*, 19 Conn. 548; *Stedwell* v. *Anderson*, 21 Conn. 139. In *Stedwell* v. *Anderson* (supra), as in the principal case, improvements had been made by one who, as it subsequently developed, had no interest in the land, and he was decreed their value.

LANDLORD AND TENANT—INSOLVENT CORPORATION—ACCRUING RENT.—A corporation lessee, holding under a lease containing covenants to pay rent, and giving lessor the right of re-entry upon breach, became insolvent. The receiver quit the premises, and disallowed the claim of the lessor for full rent for the remainder of the term. On appeal from the disallowance, *Held*, that the claim must be rejected, but without prejudice to the right of the claimant to present a new claim based upon more equitable principles. *Klein* v. *Gavenesch Co.* (1902), — N. J. Eq., —, 53 Atl. Rep. 196.

The law upon this class of cases is so closely interwoven with English and American bankruptcy and insolvency statutes, that it is difficult in many cases to deduce settled principles. The court in the principal case relies largely upon *Stockton* v. *Bank* (1880), 32 N. J. Eq. 163. In that case the court laid down the rule that a covenant to pay rent in the future was valueless, in case of insolvency, and that a claim against an insolvent corporation could not include future rent. By holding that the dismissal is without prejudice to any future claim based upon equity, the vice chancellor, in the principal case, seems to intimate that upon the presentation of such a claim, the court would be ready to depart from the rule of *Stockton* v. *Bank*. The general rule is that an assignee is not bound to accept a lease running in the name of the insolvent debtor, which would prove a burden to the estate, and diminish the assets. By refusing to accept the leasehold, he can avoid all future liability upon the covenants. If, on the other hand, the assignee deems the lease to be a profitable one, he can hold it, and apply its proceeds for the benefit of the estate. *Smith* v. *Goodman* (1893), 149 Ill. 75, 36 N. E. 621; *Hoyt* v. *Stoddard* (1861), 2 Allen 442; *Turner* v. *Richardson* (1806), 7 East 335; *Dorrance* v. *Jones* (1855), 27 Ala. 630; *Railroad Co.* v. *Humphreys* (1892), 145 U. S. 82, 12 Sup. Ct. Rep. 787, 36 L. ed. 632; BRANDENBURG ON BANKRUPTCY, 2d. ed. 703; TAYLOR ON LANDLORD AND TENANT, secs. 457-458; *Commonwealth* v. *Insurance Co.* (1874), 115 Mass.

278. And he does not, by virtue merely of privity of estate as assignee, become liable. There must be an election, actual or implied. *Goodwin* v. *Noble* (1857), 2 El. & Bl. 587; *Pratt* v. *Levan* (1827), 1 Miles (Pa.) 358; *Horwitz* v. *Davis* (1860), 16 Md. 313, and cases cited supra. Following the decisions of the English courts in the construction of their statute, American courts have deemed the lessor to be a creditor to the extent of his injury for the loss of his lease, and to such extent have justly allowed him to recover prospective damages. *People* v. *St. Nicholas Bank* (1897), 151 N. Y. 592, 45 N. E. 1129; *Sweatman's Appeal* (1892), 150 Pa. S. 369, 24 At. Rep. 617; *Underhill* v. *Collins* (1892), 132 N. Y. 269, 30 N. E. 576. And this is undoubtedly the rule favored by the court in the principal case, judging from its intimation.

LIMITATION OF ACTIONS—MORTGAGES.—A security deed was given to secure a debt, but the deed did not refer to the debt or furnish any evidence of its existence. The statute of limitations had run against the debt but had not run against the equitable mortgage. In an action to foreclose and to obtain a money judgment, *Held*, that the bar to the obligation, secured by the deed, was a bar to the action on the deed. *Duke* v. *Story* (1902), — Ga. —, 42 S. E. Rep. 722.

The general rule is that the mortgage security is not extinguished by reason of the fact that the debt secured by the mortgage is barred by the statute of limitations. This rule has been adopted by the courts or by statutes in most of the states. Several states, however, have adopted the contrary rule, holding that an action on the mortgage is barred when an action on the debt would be. This is so in Arkansas, Mississippi and Missouri by express statutory provision and in California, Illinois, Indiana, Iowa, Kansas, Kentucky and Texas by judicial decisions. Supporting the general rule, see *Bank of Metropolis* v. *Guttschlik*, 39 U. S. 14 Pet. 19; *Borst* v. *Corey*, 15 N. Y. 505; *Norton* v. *Palmer*, 142 Mass. 433; contra, *Harris* v. *Mills*, 28 Ill. 44, 81 Am. Dec. 259; *McCarthy* v. *White*, 21 Cal. 495, 82 Am. Dec. 754; see especially note to *Kulp* v. *Kulp*, 51 Kan. 341 in 21 L. R. A 550; JONES, MORTGAGES, Secs. 1204-1207; WOOD, LIMITATIONS, sec. 234. The Georgia court has generally held in conformity with the general rule as given above: *Elkins* v. *Edwards*, 8 Ga. 325; but in the principal case, the court, following *Story* v. *Davis*, 110 Ga. 65, 35 S. E. 314, distinguishes between a deed absolute on its face, containing no reference to the debt, and a mortgage, which specifies the obligation secured. This distinction is based on the ground that where a mortgage is given, the creditor contracts that there shall be two remedies against the debtor to enforce payment, while in the security deed there is no such contract expressed. It would seem that any consideration that would lead the court to the conclusion that a deed absolute on its face is in fact an equitable mortgage, would be of equal weight in establishing an implied contract for a double remedy.

MALICIOUS PROSECUTION—ABUSE OF PROCESS—SENDING CLAIM TO ANOTHER STATE FOR COLLECTION TO AVOID LOCAL EXEMPTIONS.—Defendant who honestly believed he had a claim against the plaintiff, assigned it to another for the purpose of having it sent for collection, by garnishment, into another state, in order to avoid the local exemption law. The garnishment proceeding proved unsuccessful. In an action for malicious prosecution and abuse of process, *Held*, that these facts did not show a cause of action. *Leeman* v. *McGrath* (1902), — Wis. —, 92 N. W. Rep. 425.

"In the absence of some statutory prohibition," said the court, "or the express inhibition of a court of equity, the defendant had a legal right to